

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JEFFREY CHARLES BURFEINDT

Plaintiff,

v.

**1:10-cv-123
(GLS/RFT)**

**NINA POSTUPACK; HUDSON VALLEY
CREDIT UNION , GERALD C. ROTH,
ESQ.; MARK A. KROHN, ESQ.; and
STATE OF NEW YORK also known
as Supreme Court of the State of
New York**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

JEFFREY CHARLES BURFEINDT

Last Known Addresses:

Postal Department 771

Stone Ridge, New York 12484

and

74 Pancake Hollow Road

Highland, New York 12528

and

C/O Gerhard and Barbara Burfeindt

P.O. Box 943

68 Pancake Hollow Road

Highland, New York 12528

FOR DEFENDANT POSTUPACK:

Bailey, Kelleher Law Firm
Pine West Plaza 5
Suite 507
Washington Avenue Extension
Albany, New York 12205

JOHN W. BAILEY, ESQ.

**FOR DEFENDANTS HUDSON
VALLEY CREDIT UNION and
ROTH:**

Stein, Wiener Law Firm
1 Old Country Road
Suite 113
Carle Place, New York 11514

PRANALI DATTA, ESQ.

FOR DEFENDANT KROHN:

Carter, Conboy Law Firm
20 Corporate Woods Boulevard
Albany, New York 12211

MICHAEL J. MURPHY, ESQ.

**FOR DEFENDANT STATE OF
NEW YORK:**

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
The Capitol
Albany, New York 12224-0341

JUSTIN C. LEVIN, ESQ.
Assistant Attorney General

Gary L. Sharpe
United States District Judge

DECISION AND ORDER

The court cannot locate *pro se* plaintiff, Jeffrey Charles Burfeindt. Accordingly, it considers *sua sponte* Burfeindt's noncompliance with this District's Local Rules by failing to notify the court of his current address and by not prosecuting his action.

On February 2, 2010, Jeffrey Charles Burfeindt filed a complaint in the above captioned action. *See Dkt. No. 1.* On February 2, 2010, the court provided the plaintiff with notice which he acknowledged by signing that put him on notice that he must immediately notify the court of any change of address. L.R. 10.1(b)(2). His failure to notify the court of a change of address may result in the involuntary dismissal of his case for failure to prosecute. Fed. R. Civ. P. 41(b); L.R. 41.2(b). *See Dkt. No. 4.* This district has expended considerable effort in order to familiarize *pro se* litigants with those Rules by reminding them of their obligations in various documents and orders mailed to them, and by preparing a Pro Se Handbook that is easily accessible. *See* <http://www.nynd.uscourts.gov>.

In relevant part, Local Rule ("L.R.") 10.1(b) provides:

All ... pro se litigants must immediately notify the court of any change of address. The notice of change of address is to be filed with the clerk of the court and served on all other

parties to the action. The notice must identify each and every action for which the notice shall apply.... (emphasis in original).

In turn, L.R. 41.2(b) provides that the “[f]ailure to notify the Court of a change of address in accordance with L.R. 10.1(b) may result in the dismissal of any pending action.”

L.R. 41.2(b) mirrors Rule 41(b) of the Federal Rules of Civil Procedure, which affords the court discretionary authority to dismiss an action because of the failure to prosecute or to comply with any order of the court. *Link v. Wabash R.R. County Indep. Sch. Dist.*, 370 U.S. 626 (1962); see also, *Lyell Theater Corp. v. Loews Corp.*, 628 F. 2d 37 (2d Cir. 1982).

On November 16, 2010, the Court issued an Order directing the plaintiff to file an amended complaint within thirty (30) days. The Order further states if plaintiff fails to file an amended complaint within thirty (30) days, the Clerk of the Court shall enter judgment dismissing action with prejudice and without further order of the court. See *Dkt. No. 42*.

Burfeindt’s copies of the order were mailed to Postal Department 771, Stone Ridge, New York 12484 and 74 Pancake Hollow Road, Highland, New York 125228. See *November 17, 2010 Text Only Entry*. Burfeindt’s copy of the order mailed to Postal Department 771, Stone Ridge, New

York 12484 was marked return to sender - refused, not at this location. See *Dkt. Nos. 45 and 46*. Burfeindt's copy of the order mailed to 74 Pancake Hollow Road, Highland, New York 12528 was marked return to sender - no mail receptacle. See *Dkt. No. 44*. However, the court has ascertained from criminal case 1:10-cr-320 USA v. Jeffrey Charles Burfeindt, that the plaintiff's legal residence is the address of Gerhard and Barbara Burfeindt, 68 Pancake Hollow Road, Highland, New York 12528 with a legal mailing address of Gerhard and Barbara Burfeindt, P.O. Box 943, Highland, New York 12528. See *Dkt. No. 44* in criminal case 1:10-cr-320. The court will direct the Clerk of the Court to mail a copy of this order to that address.

For the orderly disposition of cases, it is essential that litigants honor their continuing obligation to keep the court informed of address changes. *Michaud v. Williams*, 98cv1141, 1999 WL 33504430, at *1 (N.D.N.Y. Nov. 5, 1999) (citing *Fenza v. Conklin*, 177 F.R.D. 126 (N.D.N.Y. 1998) (Pooler, then D.J.). As Judge Pooler has observed:

It is neither feasible nor legally required that the clerks of the district courts undertake independently to maintain current addresses on all parties to pending actions. It is incumbent upon litigants to inform the clerk of address changes, for it is manifest that communications between the clerk and the parties of their counsel will be

conducted principally by mail. In addition to keeping the clerk informed of any change of address, parties are obliged to make timely status inquiries. Address changes normally would be reflected by those inquiries if made in writing.

Dansby v. Albany County Corr. Staff, 95cv1525, 1996 WL 172699, *1 (N.D.N.Y. Ap. 10, 1996) (citations omitted)).

As a matter of course, courts in this district have dismissed actions when litigants have failed to abide by either the Local Rules or orders related to address changes, and have subsequently failed to prosecute their actions. See *Williams v. Faulkner*, 95cv741, 1998 WL 278288 (N.D.N.Y. May 20, 1998); *Dansby*, 1996 WL 172699, at, *1; *Fenza*, 177 F.R.D. at 126; cf. *Michaud*, 1999 WL 33504430, at *1.

Although the court concludes that it would be an appropriate exercise of discretion to dismiss Burfeindt's action at this juncture for failure to notify the court of his address change or to prosecute his action, it nonetheless affords him an additional fourteen days to comply.

According, it is hereby

ORDERED that Burfeindt be granted **FOURTEEN (14)** days from the date of the filing of this order to submit his current address to the court, or verify that his mailing address is as listed in the caption of this order, and it

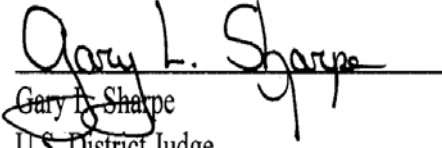
is further

ORDERED that if Burfeindt fails to comply, the court will *sua sponte* dismiss this action for failure to notify the court of his address change and for failure to prosecute; and it is further

ORDERED that the Clerk serve copies of this Order on the parties to all addresses listed under the caption in the order.

SO ORDERED.

Dated: December 9, 2010
Albany, New York


Gary L. Sharpe
U.S. District Judge